

J & S Mechanical and its workers compensation insurance carrier, Reliance Insurance Company (referred to jointly as "J & S") ask the Utah Labor Commission to review the Administrative Law Judge's award of permanent partial disability compensation to R. R. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

In two separate claims, Mr. R. seeks benefits for work-related injuries to his cervical spine and lumbar/sacral spine resulting from accidents on March 28, 1998, and January 8, 1999, respectively. The only issue before the Labor Commission is whether a medical panel should be appointed to consider the medical aspects of Mr. R.'s claim related to the cervical spine injury.

FINDINGS OF FACT

The Commission adopts the ALJ's findings of fact. In summary, Mr. R. suffered a head injury while working at J & S on March 28, 1998. He underwent substantial medical treatment for this injury over several months, primarily with Dr. Chung. He then suffered his second injury, this time to his low back, on January 8, 1999. After a few months of conservative treatment with Dr. Chung, he was referred to Dr. Fogg for surgery. Over the next several months, Dr. Fogg performed two surgeries in the region of the L4-5/L5-S1 spine.

Dr. Fogg has rated Mr. R.'s permanent impairment from the low back injury, but has not rated the permanent impairment to Mr. R.'s cervical spine. Likewise, Dr. Chung has not rated the permanent impairment to Mr. R.'s cervical spine. The only opinion on that issue comes from Dr. States, a chiropractor. It is Dr. States' opinion that Mr. R. was left with a 7% whole person impairment as a result of permanent injuries to his cervical spine.

DISCUSSION AND CONCLUSION OF LAW

As previously noted, the only issue before the Commission is whether a medical panel should be appointed to consider the medical aspects of Mr. R.'s cervical spine injury. Section 34A-2-601 of the Act gives the Commission discretion to appoint a medical panel for such purposes. By Rule R602-2-2, Utah Administrative Code, the Commission has set forth the circumstances under which it will use its discretion. As applicable to this case, Rule R602-2-2 provides that "(a) panel will be utilized by the Administrative Law Judge where. . . one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. . . ."

In this case, there are no conflicting medical reports regarding Mr. R.'s impairment from his cervical spine injury. The only opinion on that issue comes from Dr. States. Dr. Fogg has not addressed the issue at all. Dr. Chung has made some general comments regarding the injury, but has

not expressed an impairment rating opinion. Under these circumstances, the Commission agrees with the ALJ that the existing medical reports do not create a conflict on the issue of Mr. R.'s impairment from his cervical spine injury. Consequently, appointment of a medical panel to consider that issue is unnecessary.

ORDER

The Commission affirms the ALJ's decision and denies J & S's motion for review. This matter is remanded to the ALJ for further proceedings necessary to resolve the remaining issues of Mr R.'s claim. It is so ordered.

Dated this 30TH day of May, 2002.

R. Lee Ellertson, Utah Labor Commissioner